IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1359 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ? - **No.**
2	To be referred to the Reporter or not ? - **No.**
3	Whether their Lordships wish to see the fair copy of the judgment ? - **No.**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? - **No.**
5	Whether it is to be circulated to the civil judge ? - **No.**

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ABHUBHAI BHAGWANBHAI DESAI - Applicant(s)

Versus

STATE OF GUJARAT &1 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 01/12/2005

ORAL JUDGMENT

1.Abubhai Bhagwanbhai Desai, petitioner has filed this petition for writ of certiorari, writ in nature of certiorari as well as writ of mandamus for quashing and setting aside the order dated 28/6/2005

passed by the Deputy Commissioner of Police, Ahmedabad under Section 56(b) of the Bombay Police Act, 1951, externing the petitioner for the period of two years which has been confirmed by the Deputy Secretary, Home Department, Gandhinagar, respondent no.1 vide his order dated 1/10/2005 as being illegal, void. Petition was filed on 3/10/2005.

2.My brother Mr. Justice A.S.Dave, has passed order dated 4/10/2005 and issued rule which was returnable. Therefore, the matter has come up for hearing to this Court.

3.It has been stated that the authority has issued shaw cause notice dated 28/7/2004 showing cause as to why the petitioner should not be externed for a period of two years from Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana. Petitioner has submitted his reply in September 2004.

4.It is the case of the petitioner that in August 2004, hearing took place and thereafter, he has filed a final reply in September 2004. Petitioner has examined ten witnesses in this behalf also.
However, without any unavoidable reasons or unjustified reasons, the authority has passed the order of externment after 11 months in this behalf i.e. On 20/6/2005.

5.Being aggrieved and dissatisfied with the same, the petitioner has filed appeal before the Respondent No.1, appellate authority, which was dismissed by the appellate Authority on 1/10/2005.

6.Mr.Prajapati, learned advocate for the petitioner stated that though there are several grounds, he desires to urge only one ground that the order of authority is bad in law as the authority has passed the order after unavoidable and unjustified reasons in this behalf. In support of the same, he has relied upon the judgment and order in the case of Dilaji Bharthaji Vihol v. Deputy Commissioner of Police and another, in Special Criminal Application No.1451 of 2005 decided by this Court (Coram: K.M.Mehta, J.) on 1/12/2005.

7.On the other hand, Mr.L.R.Pujari, learned APP stated that in this case, as the authority was busy, the authority could not pass the order. Except that, no other reasons have been stated by the learned APP. No affidavit has been filed in this behalf showing as to why there is a delay in passing order.
In view of the aforesaid circumstances of the case, petition is allowed.

8.For the reasons recorded in the oral judgment dated 1/12/2005, this Special Criminal Application No.1359 of 2005 is allowed. This Court pleased to issue writ of mandamus, quashing and setting aside the order dated 20/6/2005 passed by the Deputy Commissioner of Police, under Section 56(b) of Bombay Police Act, externing the petitioner for

two years. This Court also pleased to declare and quash and set aside the order dated 1/10/2005 passed by the Deputy Secretary, Home Department, Gandhinagar, which confirmed the order dated 20/6/2005, externing the petitioner. Rule is made absolute. Direct service is permitted.

(K.M.MEHTA, J.)

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